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## MR. BOYD'S REPORT

(IN THE FORM OF A PROTEST)

of the Minority of the Joint select Committee on the PLANTERS BANK BONDS, to the Mississippi Legislature. Presented February 1842.

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MR. SPEAKER:

The undersigned member of the Joint select Committee appointed to enquire into the condition of the Planters' Bank, begs leave to dissent from the sentiments expressed by the report of the chairman of the committee, in regard to the liability of the State to pay the \$2,000,000 of bonds sold on account of the Planters' Bank.

In the first place, the undersigned does not understand, by the resolution under which they were appointed, that the said committee were called upon to express any opinion upon this subject; and if they had been, the undersigned must deny that said committee or this house, or either house or the whole Legislature body have any authority to do any act which can change the character of the obligation that may rest upon the people of the State to pay these bonds.

The undersigned also controverts the position assumed by the committee that the 9th section of the 7th article of our constitution, "in express terms gives authority to negotiate the loan of 1833" and that it incidentally acknowledges the validity of the loan of 1831.

That section declares "that no law shall ever be passed to raise a loan of money upon the credit of the State, or to pledge the faith of the State for the payment or redemption of any loan or debt, unless such law be proposed" &c., and concludes in these words: "provided that nothing in this section shall be so construed, as to prevent the Legislature from negotiating a further loan of one and a half million of dollars & vesting the same in stock reserved to the State by the charter of the planters' Bank of the State of Mississippi."

It is evident therefore, that the constitution, by this section, leaves the power to borrow money, so far as the Planters' Bank may be concerned, just where it found it, that is, with whatever power the Legislature had or might have had under the old constitution which is silent upon the subject. No "express authority" is given or withheld in relation to the one and a half million yet to be borrowed, and no acknowledgment is, in any manner made, in regard to the half million already borrowed, which will place the obligation of the State in relation to the bonds issued in any different posture from what it would have been of the new constitution had never been adopted.

In order properly to understand the nature and character of the obligation which may rest upon the State to pay those bonds, it is necessary to examine into the whole contract.

If an individual makes a contract, he does so in reference to the obligations imposed by the laws of the State in which the contract is made. When a State makes a contract, it does so in reference to some law which it has assented to, to bind itself.

To properly understand the nature and character of the obligation which the State imposed upon itself by the sale of the Planters' Bank Bonds, it is necessary to look into the acts incorporating the Planters' Bank, as the authority under which they were sold. It will not be contended by any one, that those bonds could have any legal existence but for the provisions of these acts, consequently it is to them that the holders of the bonds and all interested must look for their authority to claim payment of these bonds. It is a rule of law, founded on just and rational principles, that when a contract is made, it is necessary to a proper understanding of the nature of that contract, and of the intention of the parties, that the whole contract should be taken together.

The 5th section of the act of Dec. 1830, under which the first \$500,000 of

bonds were sold, declares "that the money arising from the loan hereinbefore directed, shall be applied to the payment of the five thousand shares authorized by this act to be subscribed for, on the part of the State; and the faith of the State is hereby pledged for the payment of the principal and interest of said bonds, upon the falling due thereof; and that the stocks of the State in the said bank, and is hereby declared to be pledged for the same."

The act of Feb. 5, 1833, under which the amount of \$1,500,000 of the bonds were sold, declares, in the 8th section, "that the proceeds of the said loan or loans, shall be applied to the payment of stock in the Planters' Bank, which shall be subscribed for and paid in as is directed in the different acts to which this is an amendment; and the said stock and the faith of the State are hereby pledged for the redemption and payment of said bonds, and all interest thereon, as they respectively become due."

The 9th section of the act of February 10, 1830, declares "that if the dividend arising from the stock subscribed for by the State as is herein specified, shall be insufficient to meet the interest accruing on the said bonds, and the payment and extinguishment thereof when the same shall become due, the said bank shall supply such deficiency, and charge the same to the account of the State of Mississippi, and for the payment thereof, the faith of the State is hereby pledged."

The foregoing provisions are necessarily, not only connected with, but constitute a part and parcel of the contract, as the provisions of the charter and the amendatory acts passed before the said bonds, are the only evidence of the assent of the State to such a sale, and also, express the conditions on which the State gave such assent. These provisions also contain within them, a very essential part of the inducements which were held out to those who purchased the bonds, to become such purchasers. They in fact, pledged the whole of the funds of the bank, including both the private stock and the State stock, for the payment not only of interest on the bonds, but the bonds themselves whenever they should severally fall due.

The act of the Legislature of February 15, 1839, commonly known as the transfer act by which the two millions of stock, owned by the State in the Planters' Bank, (and which was the proceeds of the sale of \$2,000,000, of bonds) was transferred to the Mississippi Rail Road company, must be regarded as having been done in reference to the lien and the previously existing rights which the holders of the bonds had on the stock.—The transfer was a transfer of such interest as the State had therein; that is, of whatever the stock was worth or might be made worth, more than the two millions and interest, which the bond-holders held as a lien thereon; and all sales or hypothecations of such stock or any part thereof, are made subject to the same incumbrance—that is, the incumbrances of the previously subsisting rights which the holders of the two millions of State bonds held over it. The State faith is pledged that the stock shall remain subject to the payment of those bonds and the interest thereon.

It is true that the tenth section of said act purports to release the Planters' Bank from the payment of the principal and interest on these bonds, but the only just construction which can be placed on the meaning of this release is that so far as its obligation toward the State existed, the Planters' Bank was released; but the Legislature had no right upon any just or constitutional principles, to discharge the bank from its previously subsisting obligation towards the bond holders themselves; and it is not proper to suppose that the Legislature intended such an act, but that the broad language there used, arose from the circumstance of there being no distrust whatever that the RR Bank would fulfil this obligation, assumed on its part. The 2nd section of said transfer act, not only imposes this obligation on the said Rail Road Company, but it expressly declares that "all the stock of private individuals in said company, shall be and remain pledged for the payment of the bonds," so that the State has the additional security of whatever effects the Rail Road Company may have, besides the stock in the Planters' Bank to give over to the holders of those bonds, out of which they ought to have the right to secure themselves; and as the 5th section of said

transfer act gives to the Legislature "full power to direct the seizure of the railroad, and all the property, effects and credits of the company," whenever they shall fail to pay said bonds or interest due thereon, justice to the holders of those bonds requires, that the State should take immediate steps to make this seizure; and also, to seize on the effects of the Planters' Bank, which has forfeited its charter by a misuser and appropriate them to the payment of its debts, and more especially to take the interest which the State has arising from the two millions of stock, and collect and pay it over as a faithful trustee to the holders of those bonds, from the sale of which the stock was created, and was pledged by the contract of purchase and sale, for the ultimate redemption of these bonds.

So far as carrying into effect the above stated measures are concerned, the undersigned is willing to admit that there is now an imperative obligation resting upon the State. The State does owe an obligation to pass all laws that may be necessary to compel all persons, to discharge the contract and fulfil the obligations which they have placed upon themselves; and the Mississippi Rail Road company and the Planters' Bank of the State of Mississippi, are under an obligation to pay these bonds and the interest thereon which they ought, not only to fulfil, but which it is the duty of the State to take necessary measures to enforce, forthwith; for it is believed that these two institutions might be enabled to pay and take up these bonds, if seized upon forthwith, and put in liquidation; and which will, in all probability, not long be the case, if this duty is not soon performed.

The undersigned cannot, however, subscribe to the doctrine that the State is under any legal or moral obligation to pay those bonds, or such part of them as the rail-road company or Planters' Bank may fail to pay. The legal and the moral obligation of the State, are one and inseparable; for State morality consists in a strict discharge of its legal obligations. The bonds were not sold in pursuance of the solemn forms required by our existing constitution, of submitting to two successive Legislatures and submitting to the people for their approval or rejection. The creation of them was but the act of a legislative body, subject to be repealed or changed by a succeeding Legislature, and an obligation to pay these bonds can only be made legally binding upon the people, by being submitted to them and ratified in the manner prescribed in the 9th section of the 7th article of the constitution which it may confidently be predicted, will never be done by the people of Mississippi.

That article in our constitution is peculiar to our own State: it exists in the constitution of no other State in the Union, and is an extension and not an abridgment of the power of the Legislature.—But for that clause, no authority could exist with the Legislature to borrow money or contract debts for any other than necessary, ordinary governmental purposes, and each succeeding Legislature has the same right of the one who creates a debt, to judge and determine as to the expediency of such debts, and of the propriety of paying them.—The idea of binding the people of a State by the modern catch word of "public faith," is founded upon the assumption that those who administer the government, have a right of property in the persons and property of the governed.

The act of pledging the faith of a State, if it has any meaning in it, gives to those, to whom the pledge is made, the right exacting a fulfilment. It is in the nature of giving a lien or mortgage on the thing pledged. The State consists of its inhabitants and its property: consequently, if the pledge means any thing, it means a pledge of the persons and property in the State, and the executing or giving of this pledge assumes that those who do so, have the right, and consequently they must claim to be the owners of the things pledged, or they commit a wilful fraud upon those to whom they execute the pledge.

The term "State faith," is like many other of these ingenious devices used in the old world to cajole the people to submit their necks to the yoke, and is akin to the doctrine of the "divine right" by which kings and monarchs tyrannize over mankind, and of those religious superstitions which are introduced in all countries where it is intended to shackle

the minds of the people. "State faith," is a gambler's word, and is used like the word "honor" among gamblers, whether of the faro dealing, or stock jobbing, or banking species. An individual who intends to fulfill the just obligations which he has assumed, will do so without pledging his "honor;" and the people of a State who have contracted a debt for the legitimate and necessary purposes of a government, will pay a debt as well without as with pledging the faith of the State. In this country, governments are not instituted for the mere purpose of having a government, and to give some man high places and great honor for themselves and families, but for the purpose of the better "securing the unalienable rights of the citizens, life liberty and the pursuit of happiness." In Europe and in all the old world, the idea of government associates with it something like that which speaking of an estate in this country does—that is, a something which gives the right to some person or persons to enjoy the fruits of the toil and labor of others—but our forefathers repudiated this principle when they declared "that to secure the unalienable right of life, liberty and the pursuit of happiness, governments are instituted among men, deriving their just powers from the consent of the governed—that whenever any form of government becomes destructive of these ends, it is the right of the people to alter and abolish it, and institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." These were the sentiments to the patriots of the revolution and these are still the sentiments and the acknowledged principles of the whole people of the United States, as is evidenced by their united plaudits given at the annual fourth of July rehearsals, held in every State, county and town in the Union.

These principles are then at war with every principle which is claimed by those who assume for the legislature of the State the right of incurring onerous or burdensome debts, and mortgaging the State for purposes not necessary to secure the lives, liberty, and pursuit of happiness of the citizens. The debt incurred by the colonies in the war of the revolution, was assumed and cheerfully paid by the nation formed out of the United colonies, because it was but the insignificant tribute given as a recompense to those who had toiled and bled, and who had, under the smiles of a divine providence, given to the nation and the people the inestimable blessing of independence and of freedom. The people of the nation cheerfully paid the one hundred and thirty millions incurred as a debt to prosecute the late war against Great Britain, because it was the second war of independence, and because it was but the just pittance given to those who had sustained the national honor and had acquired new glory and renown to the name of the American people.

But these debts which are created, not by the people themselves, but by a few usurpers, and for purposes not necessary to sustain the glory and honor of the people, or of the State or National character, but which have been contracted, by an attempt of a few to sell the birth-right of freedom of the whole people for a single banquet, and a banquet also at which but few were invited, as was the case in Mississippi and several of our sister States, will never be paid by the people. Such debts will not be paid because they were not contracted by the people, or by those who had authority to contract for them. The attempt to impose such debts upon them is not only usurpation, but in the highest degree unlawful, because against the laws of nature and of nature's God. Our right to repudiate is sanctioned by high heaven; and the impious assertion of man that he has a right to sell his fellow man, born and unborn, is forbidden by those laws which come from the throne of the eternal. The will and power of man ceases with his life, and he is forbidden by this high authority to control any thing in nature when his natural existence ceases. Generations which have gone and ceased to be, and those which have not yet come into being, have no more relationship with each other than the inhabitants of different planets, and the impossibility of their meeting or controlling each other is equally great—they are as distant from each other as the utmost stretch of imagination can conceive. It is then only by the resort to